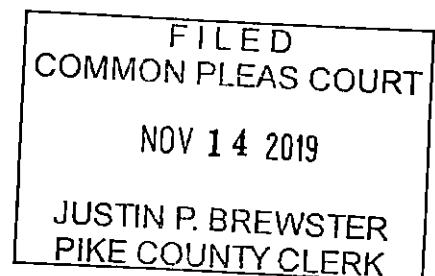


IN THE COURT OF COMMON PLEAS, GENERAL DIVISION
PIKE COUNTY, OHIO

STATE OF OHIO	:	CASE NO: 2018CR000158
Plaintiff	:	JUDGE RANDY D. DEERING
VS.	:	
RITA JO NEWCOMB	:	DEFENDANT'S MEMORANDUM
Defendant	:	CONTRA TO THE STATE OF OHIO'S
	:	MOTION TO CONTINUE THE JURY TRIAL
	:	SCHEDULED FOR NOVEMBER 18, 2019,
	:	WHICH IS DUE TO BE FILED BY STATE OF
	:	OHIO BY THE END OF THE BUSINESS DAY
	:	ON NOVEMBER 14, 2019

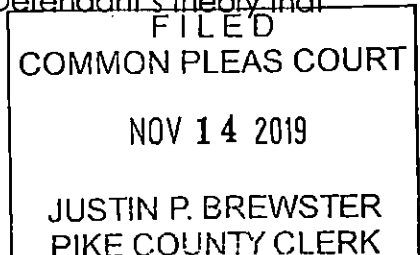
In the afternoon of November 13, 2019, the State contacted the Court and requested a phone conference with the Court at 3:30 p.m. without the knowledge of Defendant's attorney and without first contacting defense counsel. Defense counsel was out of town on legal business at the time. A phone hearing was conducted with both parties. The Court ordered Plaintiff to file a motion to continue in writing and state the reasons for such request. The Defendant was ordered to file a memorandum contra (without the benefit of receiving the State's motion first) by close of business the next day, i.e. due by November 14, 2019. The defendant is expected to "guess" what the State's arguments are for requesting a continuance and file a memorandum contra without ever having seen the State's motion.



Plaintiff apparently argues that it needs a continuance in order to review and prepare for documents it received on November 13, 2019. These documents were from Attorney Bruce Daily. Defendant opposes Plaintiff's Motion to Continue for the following reasons:

First, this is the **third** time the State of Ohio has requested a continuance of the jury trial. The first jury trial was set for July 8, 2019. The State asked for a continuance for more time to prepare and the defendant agreed to waive speedy trial time throughout the period of such continuance (Entry dated 06/25/2019) and agreed to the continuance. The next trial date was scheduled for October 21, 2019. At a motions hearing on October 7, 2019, the State of Ohio asked for a continuance a second time due to the "unavailability" of an investigator. Said request was granted and the jury trial was postponed to November 18, 2019. Now, the State is asking for another continuance.

It appears the State of Ohio was hoping defense counsel would ask for a continuance since the State "dumped" extremely important and relevant information and discovery material on the Defendant at the last minute via email dated at 7:55 pm on Friday, November 9, 2019. In fact, not only did the State send new and relevant material that they have had in their possession since June 2017, but the email indicated they were still waiting on yet another handwriting expert report and would send other documents and/or recordings previously requested at the outset of this case sometime later. As of Tuesday, November 12, 2019, the State still had not sent what it promised in its own emails. Clearly the State is not prepared and ready to try this case regardless of the Daily files. It has been a continuing course of conduct for the State to provide discovery piecemeal that it clearly has had in its possession for years. It is Defendant's theory that



not only is the State not prepared to proceed, but that the State wants more time to try to come up with something to use against the defendant. Certainly its actions have indicated same.

The State of Ohio has repeatedly failed to comply with Court order for producing discovery. Specifically, the State of Ohio first informed the Court that it would furnish Defendant's counsel with discovery no later than January 31, 2019. (Journal Entry dated 12/27/2018). When the discoverable material requested still had not been provided, the Court ordered the State to provide all discoverable material to the defendant by April 30, 2019. (Journal entry dated 05/01/2019). In response to Defendant's Motion(s) to Compel Discovery, the Court ordered the State to provide discovery including, but not limited to, any and all written or recorded statements of Defendant along with transcript from Grand Jury testimony and the recording of same to counsel for defendant no later than September 6, 2019. (Journal Entry dated 09/20/2019). Defense counsel still has not received a copy of the audio recording from the Grand Jury proceedings. Further, as late as November 12, 2019, the State of Ohio provided via email a short paragraph summary of a recording of the Defendant which was recorded by the State in June 2017. It promised to provide more discovery which has not been forthcoming. The State also promised to provide specifics as to certain jail phone calls which defense counsel still has not received. The prosecution has still failed to provide the discoverable material previously requested by the defendant. The rules of discovery, time limits for response, the right to due process, and the constitutional right to a speedy trial are rights afforded the defendant, not the prosecution. If the prosecution cannot move forward in a timely manner after filing an indictment, then the matter should be dismissed. The system was

COMMON PLEAS COURT

NOV 14 2019

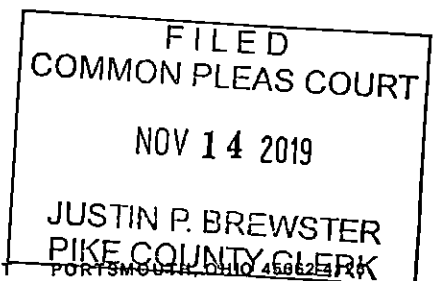
JUSTIN P. BREWSTER
PIKE COUNTY CLERK

not set up to accommodate the whims or prerogatives of the prosecution. If the defendant is ready to move forward with the trial, then the trial should go forward as scheduled on November 18, 2019.

The State also has the vast resources of the Ohio Attorney General's office, the Ohio Bureau of Criminal Investigation, Pike County and other law enforcement agencies, and the Pike County Prosecutor's office to help prepare its case for at least 2 ½ years. Yet, the State has repeatedly not provided known discovery material in its own hands even though defense counsel requested it at the beginning of this case. On the other hand, defense counsel is one individual. Nonetheless, defense counsel is able to review and prepare for trial in spite of having a full time practice of lots of other cases.

Furthermore, the State has had knowledge and access to this material long before the defendant was arrested. The State's investigators, BCI Special Agent Ryan D. Scheiderer and Major Alan Lewis with Pike County interviewed Bruce Daily for 50 minutes a long time ago. It had vast resources and subpoena power to obtain any documents it deemed relevant. Further, the "Daily files" material furnished to the State was never intended to be introduced at trial but merely used to help the witness refresh his memory if necessary. (A copy of the Precipe for Subpoena is attached.) The only reason these were sent to the prosecutor was because the prosecutor called and asked for them and they were immediately provided. The cannot use its own actions to scream foul.

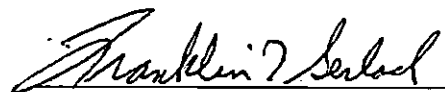
Even more important, the State has indicated that its latest handwriting experts believe the Defendant, Rita Newcomb, did not sign the alleged forged documents. It seems the proper thing to do is to dismiss these forgery charges against the Defendant in light of the new exculpatory evidence obtained by the State.



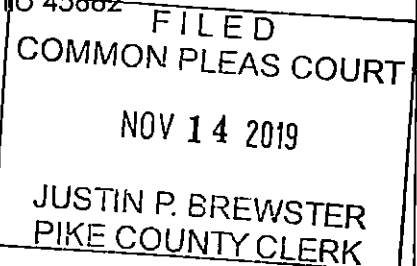
Finally, the State has another remedy at its disposal rather than a continuance. The State can file a motion to exclude these Daily files and the Court can rule upon same. Another option the State has is to dismiss this case if the State is still not ready to prosecute. This matter has dragged on long enough. This case was opened on November 13, 2018, over one year ago. If Defendant had not agreed to temporarily waive time for a speedy trial, this matter would already be tried or dismissed. The Defendant remains shackled with an ankle bracelet and her freedom severely restricted. She is still entitled to a speedy trial regardless of statutory time limits. Since she only agreed to waive time during the time of the original continuance, time is almost up to try this case. Further, we are now getting close to holiday time and bad weather which would make it difficult for jurors to attend a hearing that is postponed once again. The County has already incurred expenses in sending out jury notices and both sides have already issued subpoenas. Defendant has also timely filed its proposed jury instructions and verdict forms. It is time to try this case.

For the foregoing reasons, Defendant respectfully requests that the State's oral and any written motion to continue be denied and this matter proceed with the jury trial on this coming Monday, November 18, 2019.

Respectfully submitted,



Franklin T. Gerlach
Attorney for Defendant
Reg. No. 0019424
814 Seventh Street
Portsmouth, Ohio 45662



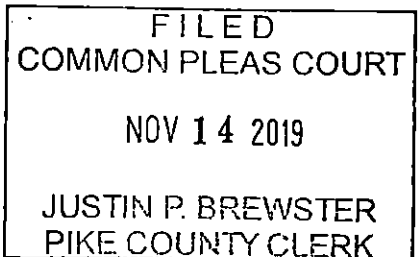
Phone 740.354.7755
Fax 740.354.6496

CERTIFICATE OF SERVICE

A copy of the foregoing Defendant's Memorandum Contra State's Motion to Continue hand delivered to the office of Robert Junk, Pike County Prosecutor, and his Special Prosecuting Attorneys, Angela Canepa and Anthony D. Pierson, Pike County Courthouse, 100 E. Second Street, Waverly, Ohio 45690, this 14th day of November, 2019.



Franklin T. Gerlach
Attorney for Defendant
Rita Jo Newcomb



COPY

IN THE COURT OF COMMON PLEAS, GENERAL DIVISION
PIKE COUNTY, OHIO

STATE OF OHIO : CASE NO: 2018CR000158
Plaintiff :
vs. : JUDGE RANDY D. DEERING
RITA JO NEWCOMB : PRECIPE FOR SUBPOENA
Defendant : DUCES TECUM

To The Clerk:

Please issue subpoena duces tecum to Pike County Sherriff for service upon the following to appear as a witness:

- 1) Bruce Dailey
842 Howard Road
Waverly, Ohio 45690

to appear as a witness for the defendant Rita Jo Newcomb, and to appear on November 20 and 21, 2019, at 8:30 a.m. in Judge Randy D. Deering's Court, Pike County Courthouse, 100 E. Second Street, Waverly, Ohio 45690, and to bring with him his case file records of Edward Jacob (Jake) Wagner relating to his child, Sophia May Wagner. It is my understanding your files are paperless, so bring a computer device so that you can access, read, and review your records.



Franklin T. Gerlach
Attorney for Defendant
Reg. No. 0019424
814 Seventh Street
Portsmouth, Ohio 45662
Phone 740.354.7755
Fax 740.354.6496

